



163225
0000920

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 08 1996

REPLY TO THE ATTENTION OF:

SE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lavon Tarr
1860 East 75th Street
Chicago, IL 60649

Re: Dutch Boy Site, Chicago, Illinois

Dear Mr. Tarr:

Enclosed please find a unilateral Administrative Order issued by the U.S. Environmental Protection Agency ("U.S. EPA") under Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. Section 9601, et seq.

Please note that the Order allows an opportunity for a conference if requested within 3 business days after issuance of the Order, and an opportunity to submit written comments within 2 business days following the conference, or if no conference is requested, an opportunity to submit written comments within 7 business days of issuance of the Order. If a conference is not requested, this Order shall be effective 10 business days following issuance of the Order. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

If you have any questions regarding the Order, feel free to contact Christine M. Liszewski, Assistant Regional Counsel, at (312) 886-4670 or Edward Hanlon, On-Scene Coordinator, at (312) 353-9228.

Sincerely yours,

William E. Muno, Director
Superfund Division

Enclosures

cc: Gary King
Illinois Environmental Protection Agency

Reed Oslan
Kirkland & Ellis

bcc: Docket Analyst, ORC (C-29A)
Chris Liszewski, ORC or (C-29A)
Ed Hanlon, (SR-6J)
Bill Messenger, EESS (SE-5J)
Carol Graszer-Ropski, EESS (SE-5J)
Toni Lesser, Public Affairs (P-19J) w/out attachments
Don Henne, Department of Interior
Tony Audia (MF-10J)
EERB Site File
EERB Read File

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 5

IN THE MATTER OF:) Docket No. V-W- '96-C-358
)
Dutch Boy Site) ADMINISTRATIVE ORDER
Chicago, Illinois) PURSUANT TO SECTION 106(a)
) OF THE COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
Respondent:) COMPENSATION, AND LIABILITY
) ACT OF 1980, AS AMENDED,
Lavon Tarr) 42 U.S.C. SECTION 9606(a),
) AND SECTION 7003 OF THE RESOURCE
) CONSERVATION AND RECOVERY ACT,
) AS AMENDED, 42 U.S.C. § 6973.

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9606(a), and Section 7003(a) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act ("RCRA") and further amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6973(a), and delegated to the Administrator of the United States Environmental Protection Agency ("U.S. EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Waste Management Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 12000 to 12054 South Peoria Street and 901 to 935 West 120th Street in Chicago, Illinois (the "Dutch Boy Site" or the "Site"). This Order requires the Respondent to coordinate and participate in removal activities described in the previously issued Unilateral Administrative Order dated March 26, 1996 (Appendix A to this Order), Docket No. V-W-'96-C-347, to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Illinois of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

II. PARTIES BOUND

This Order applies to and is binding upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Dutch Boy Site is located at 12000 to 12054 South Peoria Street and 901 to 935 West 120th Street, Chicago, Cook County, Illinois, Latitude 41 degrees 40 minutes 29 seconds north, Longitude 87 degrees 38 minutes 29 seconds west. The Site is a former lead and lead-based paint manufacturing facility which currently has no buildings. Approximately 80 percent of the Site is covered with concrete or asphalt. The Site is situated in a primarily industrial area. 120th Street borders the Site to the north, South Peoria Street borders the Site to the east, the Illinois Central Gulf Railroad borders the Site to the south, and an empty lot borders the Site to the west. The nearest residential areas are approximately 300 - 500 feet from the Site.
2. The Site is located in Block 7, and on a strip of land immediately south and adjacent to Block 7, in the first addition to West Pullman, a subdivision of the north east 1/4 of Section 29, Township 37 north, range 14 east of the Third Principal Meridian, located in the City of Chicago, Cook County, Illinois. The Site property consists of the eastern 375.20 feet of Block 7 (Parcel 1), and a strip of land, (Parcel 2) 375.20 feet by 30 feet, located immediately adjacent and south of Block 7. The Site property, which is rectangular in shape, occupies 5.00 acres in Parcel 1, and approximately 0.25 acres in Parcel 2.
3. Parcel 1 was owned by NL Industries, Inc. ("NL") from 1937 to 1976. NL sold this parcel to ELT, Inc. in 1976. ELT,

Inc. subsequently changed its name to Dutch Boy, Inc. In 1980, Dutch Boy, Inc. transferred its interest in this parcel to Goodwill Industries of Chicago, Illinois ("Goodwill") through a charitable donation agreement. Legal title to this parcel was held by American National Bank and Trust Co. of Chicago in trust for Goodwill. Sometime after 1980, Dutch Boy, Inc. changed its name to ARTRA Group, Inc. ("ARTRA"). In 1982, Goodwill sold its interest in Parcel 1 to John Heckens who subsequently sold his interest in Parcels 1 and 2 to M & T Enterprises, Inc. ("M & T") that same year. Lavon Tarr and Martin Bieber were the sole stockholders (each holding 50 percent of the shares) and only officers of M & T. Lavon Tarr served as President and Martin Bieber served as Secretary of M & T. In 1984, M & T transferred its interest in Parcels 1 and 2 to Lavon Tarr who still has a beneficial interest in these parcels. Legal title is currently held by Cole Taylor Bank (formerly known as Drovers Bank) in trust for Lavon Tarr.

4. NL manufactured lead and lead-based paints at the Dutch Boy Site from 1906 through mid-1977. ARTRA manufactured lead-based paints at the Site from 1977 until 1980, when it sold the Dutch Boy name and some of its assets to Sherwin Williams. Sherwin Williams did not purchase the Dutch Boy Site. ARTRA donated the Site to Goodwill. No further paint manufacturing was conducted at the Site after ARTRA transferred its interest in the property to Goodwill.
5. Several former employees of NL and ARTRA who worked at the Dutch Boy plant between 1956-1980 have made statements indicating that they observed lead dust throughout the plant. One former employee stated that lead dust was usually in the air at the oxide plant, spills from the lead conveyor occurred often, lead leaked from the machinery, and dust collector bags would burn and cause lead dust to be released into the air. Another employee found that at certain times the lead dust was so thick that he could write his name in it. Yet another employee stated that at times the lead dust was so thick that he could only see for a distance of 10 or 15 feet. Two employees indicated that blood tests taken while they were employed at the Dutch Boy plant showed they had elevated lead levels.
6. In September 1976, an employee at the Dutch Boy plant filed a complaint with the Occupational Health and Safety Administration ("OSHA") of the U.S. Department of Labor indicating that five men had experienced lead poisoning at the plant. OSHA inspected the plant and took samples to

determine workers' exposure to lead. Sample results showed that several workers were exposed to lead oxide at concentrations in excess of the concentration limits allowed by OSHA regulations. In November 1976, OSHA issued a citation to NL for this and other alleged violations. In April - May 1980, OSHA again inspected the Dutch Boy plant and found that repeat monitoring was not conducted on employees who were exposed to lead in excess of the permissible exposure level, employees were not timely notified of exposure testing results, facility surfaces were not maintained free of lead accumulations, and blood sampling and analysis for employees previously found to have excessive blood lead levels was not conducted. In June 1980, OSHA issued a citation and notification of penalty to ARTRA (then known as Dutch Boy, Inc.) for these violations.

7. In 1983, M & T, by its President, Lavon Tarr, entered into an agreement with Randall Polk d/b/a Wrip Wrecking Co. to raze the steel and brick building on the Site. Wrecking operations commenced in 1983 and were terminated in 1986, when the Illinois Department of Public Health ("IDPH"), the Illinois Environmental Protection Agency ("IEPA") and the City of Chicago found lead and asbestos dust created by demolition activities posed an imminent danger to the community.
8. In 1986, IDPH notified IEPA that it had received notice of five cases of lead poisoning that were traced to the Dutch Boy Site. Three of the lead poisoning cases were in children between the ages of 8 to 11 who were apparently playing on the Site. One case involved a scavenger who was working on the Site. The source of the lead poisoning was attributed to solid lead particles which collected inside of and on the building structure and became airborne when disturbed by wrecking operations. Asbestos was also detected inside the building structure.
9. In June 1986, IEPA initiated an immediate removal at the Site. This removal was done in three phases. During Phase I in June 1986, IEPA removed and disposed of surficial solids, both suspected and known to contain lead and/or asbestos. During Phase II in November 1986, IEPA sampled, analyzed and disposed of liquids, solids and sludges contained in all above-ground and underground storage tanks (USTs). IEPA also removed and disposed of all existing process/production equipment and debris located in and around the building, baghouses, mixing tanks, screw conveyors, hoppers, masonry rubble, and asbestos in and

around the building. The freestanding walls of the building and all outbuildings were also demolished. During Phase III in 1987, IEPA assessed the structural integrity of the USTs and concluded that they were structurally sound and did not leak. IEPA also sampled and analyzed the soil for lead contamination. Results showed that 130 cubic yards of soil on and adjacent to the site contained greater than 5 milligrams per liter ("mg/L") of Extraction Procedure ("EP") toxicity lead and approximately 140 cubic yards of soil contained greater than 1% lead. An EP toxicity level equal to or greater than 5 mg/L was considered hazardous under the RCRA regulations in effect at that time. IEPA did not remove the soil.

10. In June 1987, Toxcon Engineering Company, Inc. ("Toxcon") conducted a field investigation at the Site on behalf of NL. Samples were taken at 34 locations on-Site and in the parkway across the street from the Site. Analytical results of lead samples taken at two locations indicated high total lead levels. A soil sample taken from the northeast portion of the Site had a total lead level of 11,400 milligrams per kilogram ("mg/kg") or parts per million ("ppm"). A second sample taken from the west side of the Site had a total lead level of 50,000 mg/kg. This sample also had an EP toxicity level of 41 mg/L. In addition, a third sample taken from the parkway northeast of the site had an EP toxicity level of 4.6 mg/L. Based on these sample results and discussions with IEPA, Toxcon conducted additional field sampling in February 1988 and concluded that there was one on-Site area and two off-Site areas containing EP toxicity lead greater than 5 mg/L.
11. In 1991, U.S. EPA's contractor, Ecology and Environment, Inc. ("E & E") conducted an off-site reconnaissance of the Dutch Boy Site. E & E observed no hazardous waste but found small piles of general household and construction refuse scattered throughout the Site. E & E also observed a homeless person occupying the 3-story building at the Site. Since abandoned building structures containing hazardous substances and contaminated soils surrounding these structures were still present at the Site, E & E concluded that release of hazardous substances to the air was still a potential threat to human health. E & E recommended that the Site be secured to prevent access by the public and that samples of the building structures and soils be taken to determine whether the release of hazardous substances from the Site posed a potential threat to the community.

12. On August 10, 1993, U.S. EPA, IEPA and E & E staff conducted a site assessment at the Dutch Boy Site. They observed that mattresses and a cooking area had been established at the Site and concluded that homeless persons may have temporarily sheltered there. They found no soil piles or exposed soils on the Site and took no soil samples.
13. On August 25 and 26, 1993, Simon Hydro-Search, Inc. ("Simon") conducted an environmental assessment at the Site on behalf of NL. Eleven soil samples were collected from seven on-Site locations. Results show elevated levels of lead in the soil in two areas. In the area of the loading dock/railroad spur on the west side of the Site, total lead levels as high as 45,700 mg/kg and Toxicity Characteristic Leaching Procedure ("TCLP") levels as high as 694 mg/L were found. In the parkway outside the northeast corner of the Site, a total lead level of 19,200 mg/kg and a TCLP level of 98.4 mg/L were found in one location. Any solid waste that contains lead at levels equal to or greater than 5 mg/L is regulated as a RCRA hazardous waste.
14. On May 10, 1994, Harza Environmental Services, Inc. ("Harza") conducted a site investigation at the Site on behalf of the City of Chicago. Harza collected and analyzed 13 wipe samples and 13 scrape samples from the 3-story mill building at the Site. Seven of the 13 wipe samples and 8 of the 13 scrape samples met the IDPH definition of a lead-bearing substance. Six soil samples retrieved from vertical depth intervals of between 6 and 15 feet were analyzed for TCLP lead. One other soil sample was collected at a depth interval of 1.0 and 2.5 feet. All soil samples had TCLP lead levels at or below the RCRA level for hazardous waste.
15. On June 8, 1995, a U.S. EPA on-scene coordinator ("OSC") and staff from E & E and Harza Environmental Services, Inc. conducted another site assessment at the Dutch Boy Site. They found indications that vagrants were living at the Site. Six soil samples were collected and analyzed for lead. Total lead was detected in on-Site soils at concentrations ranging from 1,540 mg/kg to 31,700 mg/kg. A total lead level of 21,200 mg/kg was found in a sample collected from the east side of the building structure near a fire hydrant in the parkway. A total lead level of 31,700 mg/kg was found in another sample collected from the east side of the northernmost loading dock on the west side of the Site. This sample also had a TCLP level of 351 mg/L. In its August 25, 1995 Site Assessment Report, E & E concluded that, since lead is a cumulative poison with

documented acute and chronic health effects including kidney damage, anemia, decreased fertility, birth defects and depression of the central nervous system, the Dutch Boy Site should be secured and an extent of contamination study should be conducted to determine the extent of lead-contaminated soil present at the Site.

16. On November 17, 1995, U.S. EPA notified the present owner and the past owners and operators of the Site of their potential liability for cleanup of the Site. In addition, U.S. EPA requested that these potentially responsible parties (PRPs) notify U.S. EPA if they would be willing to enter into an administrative consent order under which they would perform or finance Site-cleanup activities. None of the PRPs agreed to enter into such an order with U.S. EPA.
17. In February 1996, U.S. EPA's contractor, Science Applications International Corporation ("SAIC"), reviewed a number of reports on the Dutch Boy Site and assessed the likelihood of a potential release of lead from the manufacturing processes conducted at the Site. Using conservative estimates of air emissions, SAIC calculated that approximately 166 tons of lead were released into the air between 1906 and 1980 from the manufacturing activities at the Site. Assuming that each of the manufacturing processes at the Site had a short stack and low exit velocity and temperature, SAIC found that most of the stack emissions would have settled out within several hundred feet of the stack.
18. In March 1996, U.S. EPA prepared an interim final risk assessment for the Dutch Boy Site. The risk assessment assumed that the Site would be used for an occupational scenario and that it would not be frequented by small children. Based on these assumptions, U.S. EPA calculated a risk-based clean-up goal of 1,400 ppm as the average concentration of lead in soil which would allow for risks within an acceptable range. In addition, the risk assessor recommended that any hot spots which are significantly higher than the 1,400 ppm be remediated even if, when averaged, they contribute to an acceptable range of risk.
19. On March 26, 1996, U.S. EPA issued a Unilateral Order for removal activities at the Site to NL. U.S. EPA ordered NL to prepare and implement a plan for Site security, post warning signs, perform an extent-of-contamination survey and develop and implement a risk management plan. On April 24, 1996, NL notified U.S. EPA of its intent to comply with the

terms of the Order and on June 13, 1996, NL submitted a final work plan to U.S. EPA (Appendix B to this Order). In accordance with the Work Plan, on July 3, 1996, NL submitted a final Site security plan (Appendix C to this Order) and a draft sampling and analysis plan.

IV. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, U.S. EPA determines that:

1. The Dutch Boy Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Lead is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Lavon Tarr is the present "owner" and "operator" of the Dutch Boy Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended ("NCP"), 40 C.F.R. Part 300. These factors include, but are not limited to, the following:

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants:

This factor is present due to the existence of high levels of lead in the soils at the Site. Soil sample results have indicated total lead concentrations as high as 50,000 mg/kg in certain areas of the Site and total lead concentrations as high as 21,200 mg/kg in certain parkway locations outside

the Site. TCLP lead concentrations as high as 694 mg/L or 138 times the RCRA regulatory level were found on-Site. Lead is a cumulative poison with documented acute and chronic health effects. Five cases of lead poisoning in 1986 were traced to the Site. The Site is not secured and trespassers were observed at the Site on a number of occasions. In a risk assessment performed for this Site, a U.S. EPA risk assessor found that the average level of lead contamination at the Site would present an unacceptable level of risk to workers should the Site be used for commercial or industrial purposes.

b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate:

This factor is present at the Site due to the existence of high total lead levels and TCLP-lead concentrations at levels that characterize the contaminated soil as a hazardous waste under RCRA. The lead in the soil may migrate via runoff into storm sewers and road ditches after heavy rains and/or migrate via airborne dust particulates under dry weather conditions.

c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released:

This factor is present at the Site due to the existence of high levels of lead in the soil and the potential for migration of lead-contaminated soils via runoff into storm sewers and road ditches after heavy rains and/or the potential for migration of lead through airborne dust particulates under dry weather conditions.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

V. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:

1. Notice of Intent to Comply

Respondent shall notify U.S. EPA in writing within 3 business days of the effective date of this Order of Respondent's irrevocable intent to comply with this Order and shall specify Respondent's proposed manner of compliance with the Order. Respondent's failure to provide such notification within this time period shall be a violation of this Order.

2. Designation of Contractor, Project Coordinator and On-Scene Coordinator

Respondent shall perform the removal actions itself or retain a contractor to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor(s), whichever is applicable, within 5 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of the Respondent or any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's

disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

U.S. EPA has designated Edward Hanlon as its OSC. Respondent shall direct all submissions required by this Order to the OSC at 77 W. Jackson Boulevard, SR-6J, Chicago, Illinois 60604-3590, by certified or express mail. Respondent shall also send a copy of all submissions to Christine M. Liszewski, Assistant Regional Counsel, 77 West Jackson Boulevard, CM-29A, Chicago, Illinois, 60606-3590. Respondent is encouraged to make its submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

3. Work to Be Performed

Respondent shall participate and cooperate with the Performing Party, i.e., NL, in the on-going work at the Site. This includes the following activities:

- a. Prepare and submit to U.S. EPA a plan for Site security. Implement the plan for Site security after receiving approval of the plan from U.S. EPA.
- b. Post signs warning passersby that hazardous substances are present at the Site.
- c. Perform an extent of contamination (EOC) survey that includes developing and implementing a Site sampling and analysis plan which will:
 - 1) identify the vertical and horizontal extent of on-Site soil contamination;
 - 2) determine the background concentrations of lead in soils in the vicinity of the Site;
 - 3) determine whether lead is present in levels above background concentrations from former Site activities beyond the boundaries of the Site and the extent of such contamination; and
 - 4) prepare and submit a summary report of the EOC survey to U.S. EPA.

- d. Upon approval of the EOC summary report by U.S. EPA, develop and submit a risk management plan to reduce the risks associated with the lead-contaminated soils from former Site activities both on-Site and beyond the boundaries of the Site. Any soils left exposed must not pose a threat of actual or potential exposure to lead to nearby human populations, animals or the food chain or be allowed to migrate off-site. The plan should consider various alternatives to reduce the risks, compare costs and protectiveness of each alternative, and recommend an alternative to be implemented that is cost-effective and protective of human health and the environment. The risk management plan should be consistent with the cleanup goal of 1,400 ppm that U.S. EPA calculated as the average concentration of lead in soil at the Site that would allow for risk within an acceptable range under an occupational use scenario. The cleanup goal of 1400 ppm does not apply to residential areas or to areas that may potentially be used for residential purposes.
- e. Upon approval of the risk management plan and the Respondent's selected alternative by U.S. EPA, implement the approved alternative to abate the hazards associated with lead-contaminated soils from former Site activities both on-Site and beyond the boundaries of the Site.

3.1 Work Plan and Implementation

Appendix B to this Order is the Work Plan for the completion of the activities described in Section V.3a-e above. This Work Plan is incorporated into and made an enforceable part of this Order. Respondent shall participate and cooperate with the Performing Party in performing each of the response actions listed in Section V.3a-e above and the Work Plan.

Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-Site work pursuant to the U.S. EPA approved work plan. Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

3.2 Health and Safety Plan

Appendix B to this Order includes the Health and Safety Plan that must be followed to ensure the protection of the public health and safety during performance of on-Site work under this Order.

Respondent shall implement the plan during the pendency of the removal action.

3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with U.S. EPA guidance. Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

3.4 Best Efforts to Coordinate with the Performing Party

To the extent that any other person ("Performing Party") is performing or has stated an intent to perform any requirement of this Order, as identified in Section V.3a-e above, pursuant to any other order or agreement under Section 106, 42 U.S.C. § 9606, Respondent shall make best efforts to coordinate with the Performing Party. Best efforts to coordinate shall include at a minimum:

- a. communicating in writing within 3 business days of the effective date of this Order to the Performing Party as to Respondent's desire to comply with this Order and to participate in the performance of the work;
- b. submitting within 10 calendar days of the effective date of this Order to the Performing Party of a good-faith offer to participate in the performance of the work; and

- c. engaging in good-faith negotiations with the Performing Party to participate in the performance of the work if such Performing Party refuses Respondent's first offer.

Respondent shall notify U.S. EPA in writing within 10 calendar days of the rejection, if any, by the Performing Party of Respondent's offer to participate in the performance of the work.

The undertaking or completion of any requirement of this Order by any other person, with or without the participation of the Respondent, shall not relieve Respondent of his obligation to perform each and every other requirement of this Order.

Any failure to perform, in whole or in part, any requirement of this Order by any other person with whom Respondent is coordinating or participating in the performance of such requirement shall not relieve Respondent of his obligation to perform each and every requirement of this Order.

Upon request of U.S. EPA and subject to any claims of applicable privileges, Respondent shall submit to U.S. EPA all documents in his possession, custody, or control relating to (1) Respondent's offers to the Performing Party to participate in the performance of the work, or (2) Respondent's participation in the performance of the work required by this Order in conjunction with the Performing Party.

U.S. EPA may seek civil penalties for each failure of Respondent to comply with any of the requirements in this Section. U.S. EPA may also seek punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), for any costs incurred by the Fund as a result of Respondent's non-compliance with this Section.

3.5 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the effective date of this Order, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

3.6 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

4. Access to Property and Information

Respondent shall provide or obtain access as necessary to the Site and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Order. Such access shall be provided to U.S. EPA employees, contractors, agents, consultants, designees, representatives, State of Illinois representatives, and to other entities performing actions pursuant to an administrative order issued by U.S. EPA. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractor, or on the Respondent's behalf during implementation of this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within 14 calendar

days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention. Documentation. Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA.

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 C.F.R. § 300.440, 58 Federal Register 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e) and 40 C.F.R. Section 300.415(i). In accordance with 40 C.F.R. Section 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency and Enforcement Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

VII. PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$25,000 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. § 9606(b)(1). Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

VIII. REIMBURSEMENT OF COSTS

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency
Superfund Accounting
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs - Dutch Boy Site" and shall reference the payor's name and address, the U.S. EPA site identification number 05VG, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 C.F.R. § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of

the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

IX. RESERVATION OF RIGHTS

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

X. OTHER CLAIMS

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

XI. MODIFICATIONS

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Waste Management Division, Region 5.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its (their) obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

XII. NOTICE OF COMPLETION

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

XIII. ACCESS TO ADMINISTRATIVE RECORD

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Christine M. Liszewski, Assistant Regional Counsel, at (312) 886-4670 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

XIV. OPPORTUNITY TO CONFER

Within 3 business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Christine M. Liszewski, Assistant Regional Counsel, at (312) 886-4675. Written submittals shall be directed as specified in Section V.2 of this Order.

XV. SEVERABILITY

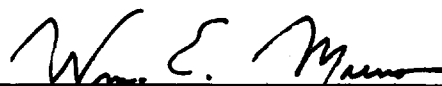
If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

XVI. EFFECTIVE DATE

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED.

BY:



William E. Muno, Director
Superfund Division
United States
Environmental Protection Agency
Region 5

DATE:

8/8/76